

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2624

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Miller

SUBJECT: Florida Black Business Investment Board

DATE: April 16, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	CM	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute authorizes the Florida Black Business Investment Board, Inc., (BBIB) to participate in the Florida Minority Business Loan Mobilization Program, increases the authority of the BBIB over its bylaws and policies, requires black business investment corporations to be certified by the BBIB every 5 years, and changes the due date for the BBIB's annual report from February 1 to May 1.

The committee substitute substantially amends the following sections of the Florida Statutes: 288.706, 288.709, 288.7091, 288.71, and 288.714.

## II. Present Situation:

### Florida Black Business Investment Board, Inc.

#### *Purpose*

The Florida Black Business Investment Board (BBIB) was created by ch. 85-104, L.O.F., to encourage the growth of small and minority businesses by removing unnecessary burdens imposed upon these businesses and by aggressively promoting an atmosphere conducive to their development.<sup>1</sup> Under ch. 2002-180, L.O.F., the BBIB was removed from the Office of Tourism, Trade, and Economic Development and became a not-for-profit corporation that is not a unit or entity of state government. In its new status, the BBIB is a public-private partnership under contract with the Office of Tourism, Trade, and Economic Development.

<sup>1</sup> Preamble to ch. 85-104, L.O.F.

The BBIB was created to promote the creation and growth of black business enterprises, defined as businesses that are at least 51 percent owned by black Americans and managed and controlled by such persons.<sup>2</sup> Working in concert with the BBIB are the black business investment corporations (BBICs) and the Florida Black Business Support Corporation (BBSC). The BBICs are subsidiaries of financial institutions or a consortium of financial institutions investing in or lending to black business enterprises.<sup>3</sup> Specifically, BBICs provide loan guarantees and direct lending products to black business enterprises.<sup>4</sup> The BBIB has a non-voting investment interest in all 8 of the regional BBICs.<sup>5</sup>

The BBSC is a not-for-profit corporation under s. 501(c)(3), Internal Revenue Code, which administers technical assistance programs and coordinates events to promote the flow of information to BBIB program participants.<sup>6</sup> The BBSC was established as a not-for-profit organization to allow it to receive tax-deductible contributions.<sup>7</sup> The BBIB is the sole shareholder of the BBSC. The BBSC is also the statewide BBIC, which serves areas not served by the regional BBICs.<sup>8</sup>

The board is further broadly empowered with the rights and responsibilities of a corporation, with the power to do all things necessary and convenient to promote black business enterprises.<sup>9</sup> The duties of the board include the following: establish certification criteria for BBICs; establish loan criteria that target high-growth jobs; increase the number of black business enterprises participating in government-financed construction projects; and prepare an annual report on the performance of BBICs. The board is also required to develop memoranda of understanding with: Enterprise Florida, Inc., to contract with the BBIB for the delivery of economic development services relating to black business enterprises; financial institutions that will provide loan guarantees to black business enterprises located in areas not served by a BBIC; and various government agencies to collaborate in areas of common interest.<sup>10</sup>

### ***Members***

The members of the board of directors (board) of the BBIB may include up to 15 individuals appointed by the Governor, the President of the Senate, the Speaker of the House of Representatives, and the BBIB itself as follows:

1. Six members appointed by the Governor and subject to confirmation by the Senate, who must be experienced in investment finance and business development.

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<sup>2</sup> Section 288.707(2)(a), F.S.

<sup>3</sup> Section 288.707(2)(b), F.S.

<sup>4</sup> Office of Program Policy Analysis and Government Accountability (OPPAGA), Profile No. 6126, *Florida Black Business Investment Board, Inc., Florida Government Accountability Report*, available at <http://www.oppaga.state.fl.us/profiles/6126/> (last visited April 8, 2003).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> KPMG Consulting Public Services, *Feasibility Study for Service Expansion*, p. 15, dated September 27, 2002.

<sup>9</sup> Section 288.709, F.S.

<sup>10</sup> Section 288.7091, F.S.

2. One member from the private sector appointed by the President of the Senate, who must be experienced in investment finance and business development.
3. One member from the private sector appointed by the Speaker of the House of Representatives, who must be experienced in investment finance and business development.
4. Three representatives of black business investment corporations, who must be selected from among and by the chairs of the black business investment corporations.
5. The vice chair of Enterprise Florida, Inc., or his or her designee, who shall be an ex officio, nonvoting member, and who shall provide information, advice, and guidance designed to enhance the coordination of activities of Enterprise Florida, Inc., and the BBIB.
6. The chair of the Florida Development Finance Corporation, created pursuant to s. 288.9604, who shall be an ex officio, nonvoting member of the board.

In addition, the board may by resolution appoint two at-large members to the board from the private sector, each of whom may serve a 1-year term. At-large members shall have the powers and duties of other members of the board, except that they may not serve on an executive committee.<sup>11</sup>

### ***Power to Adopt Bylaws***

Generally, the board of directors of a not-for-profit corporation has the authority to adopt the corporation's bylaws under ch. 617, F.S.<sup>12</sup> Bylaws are rules or administrative provisions adopted by a corporation for its internal governance.<sup>13</sup> Under s. 288.709(1), F.S., the bylaws of the BBIB affecting the operation or administration or financial well-being of a BBIC, however, must be adopted by its board of directors and be approved by a majority of the BBICs.

### ***Rules***

Agencies of state government may be required to adopt rules and follow the procedures specified for rule-making in ch. 120, F.S. However, rules governing the BBIB codified in rules 8K-1.001 through 8K-2.010, F.A.C., have not been repealed since the BBIB transitioned from an entity of state government to a not-for-profit corporation that is not a unit or entity of state government. As a result, certification criteria for BBICs remain codified in rule 8K-2.009, F.A.C. According to that rule, BBICs must be recertified by the BBIB every 5 years. Since the BBIB is no longer an entity of state government, the administrative rules governing the BBIB may no longer be applicable.

### ***Annual Report***

According to s. 288.714, F.S., every February 1, the BBIB is required to submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and

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<sup>11</sup> Section 288.707(3)(a) and (h), F.S.

<sup>12</sup> Section 617.0206, F.S.

<sup>13</sup> Black's Law Dictionary (7th ed. 1999).

the director of the Office of Tourism, Trade, and Economic Development. The annual report due February 1, 2003, has not been completed.

### **Florida Minority Business Loan Mobilization Program**

The Florida Minority Business Loan Mobilization Program was created to assist a minority business enterprises (MBEs), as defined in s. 288.703(2), F.S., to compete for state contracts for goods or services by facilitating access to working capital.<sup>14</sup> A state agency that awards a contract to an MBE may: (a) disburse up to 10 percent of the base contract award amount to assist an MBE vendor in obtaining working capital financing; or (b) disburse up to 5 percent of the base contract award amount to an MBE vendor that provides professional services. The funds are disbursed to the MBE and a financial institution that agrees to provide the MBE with working capital equal to 125 percent to 200 percent of funds disbursed from the state agency to the MBE and financial institution.

### **III. Effect of Proposed Changes:**

The committee substitute authorizes the Florida Black Business Investment Board, Inc., (BBIB) and black business investment corporations (BBICs) to participate in Florida Minority Business Loan Mobilization Program, increases the authority of the BBIB over its bylaws and policies, requires BBICs to be certified by the BBIB every 5 years, and changes the due date for the BBIB's annual report from February 1 to May 1.

**Section 1** authorizes the BBIB and BBICs, through the Florida Minority Business Loan Mobilization Program, to enter into working capital agreements with black business enterprises that are awarded state contracts. Currently, only financial institutions are authorized to provide working capital to minority vendors under the program. Although the Florida Minority Business Loan Mobilization Program was created to benefit minority-owned businesses, s. 288.71, F.S., limits the BBIB to providing assistance to black business enterprises.

**Section 2** authorizes the board of directors of the BBIB to adopt bylaws and policies for the BBIB without the approval of a majority of the BBICs.

**Section 3** provides that BBIB must certify each BBIC at least once every 5 years. A requirement for BBICs to be recertified by the BBIB every 5 years exists in rule 8K-2.009(3), F.A.C. However, because the BBIB is no longer an agency of state government, existing administrative code provisions may no longer be applicable to the BBIB.

**Section 4** changes the term "rules" to "policies." The change conforms statutory language governing the BBIB with its change in status last year from an entity of state government to a not-for-profit corporation which is not a unit or entity of state government. Since the BBIB no longer is an entity of state government, the Administrative Procedure Act codified in ch. 120, F.S., and its rulemaking requirements no longer apply to the BBIB.

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<sup>14</sup> Section 288.706, F.S.

**Section 5** changes the due date for the annual report that the BBIB is required to deliver to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the director of the Office of Tourism, Trade, and Economic Development from February 1 to May 1.

**Section 6** provides that the committee substitute takes effect July 1, 2003.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The board of directors of the Black Business Investment Board (BBIB) will have more control over the operations of the BBIB by having the authority to adopt bylaws and certain policies without the approval of a majority of the black business investment corporations (BBICs).

The BBIB and BBICs will be authorized to enter into working capital agreements with black business enterprises through the Florida Minority Business Loan Mobilization Program.

C. Government Sector Impact:

The BBIB's annual report is currently due on February 1, approximately a month before the Legislature convenes every year. By changing the due date of the annual report from February 1 to May 1, the Governor and Legislature may have information from the report that is less timely when making decisions during the Regular Session regarding the BBIB.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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